

Kevin H. Marino
John D. Tortorella
**MARINO, TORTORELLA & BOYLE,
P.C.**
437 Southern Boulevard
Chatham, NJ 07928
Tel: (973) 824-9300
Fax: (973) 824-8425
kmarino@khmarino.com
jtortorella@khmarino.com

Attorneys for Defendants

Pamela A. Miller (admitted *pro hac vice*)
Lauren M. Wagner (admitted *pro hac vice*)
O'MELVENY & MYERS LLP
7 Times Square
New York, NY 10036
Tel: 212-326-2000
Fax: 212-326-2061
pmiller@omm.com
lwagner@omm.com

Meaghan VerGow (admitted *pro hac vice*)
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20006
Tel: 202-383-5300
Fax: 202-383-5414
mvergow@omm.com

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SERGEY BURMIN and KENNETH W.
LUKE, Individually and on Behalf of All
Other Persons Similarly Situated,

Plaintiffs,

v.

E*TRADE SECURITIES LLC and MORGAN
STANLEY SMITH BARNEY LLC,

Defendants.

Case No. 24-cv-00603 (ES) (MAH)

Hon. Esther Salas, U.S.D.J.

ORAL ARGUMENT REQUESTED

Motion Date: May 20, 2024

**NOTICE OF MOTION TO DISMISS
PLAINTIFFS' COMPLAINT PURSUANT
TO FED. R. CIV. P. 12(b)(6)**

PLEASE TAKE NOTICE that on May 20, 2024, or as soon thereafter as counsel may be heard, the undersigned counsel for Defendants E*TRADE Securities LLC and Morgan Stanley Smith Barney LLC will move before the Honorable Esther Salas, U.S. District Judge for the District of New Jersey, at the MLK Jr. Federal Bldg. & U.S. Courthouse, 50 Walnut St., Newark, NJ 07102, to dismiss with prejudice the Complaint filed by Plaintiffs Sergey Burmin and Kenneth W. Luke, individually and on behalf of all other persons similarly situated, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

PLEASE TAKE FURTHER NOTICE that, in support of this motion, Defendants will rely on the supporting Memorandum of Law and the Declaration of Meaghan VerGow with exhibits, which are filed herewith.

PLEASE TAKE FURTHER NOTICE that a proposed order granting this motion is attached hereto.

Dated: April 15, 2024

Respectfully submitted,



Kevin H. Marino
John D. Tortorella
MARINO, TORTORELLA & BOYLE, P.C.
437 Southern Boulevard
Chatham, NJ 07928
Telephone: (973) 824-9300
Facsimile: (973) 824-8425
kmarino@khmarino.com
jtortorella@khmarino.com

Pamela A. Miller (admitted *pro hac vice*)
Lauren M. Wagner (admitted *pro hac vice*)
O'MELVENY & MYERS LLP
7 Times Square
New York, NY 10036
Telephone: 212-326-2000
Facsimile: 212-326-2061
pmiller@omm.com
lwagner@omm.com

Meaghan VerGow (admitted *pro hac vice*)
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20006
Telephone: 202-383-5300
Facsimile: 202-383-5414
mvergow@omm.com

Attorneys for Defendants